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**UTAH LABOR COMMISSION**

**ALFREDO REYES,**

**Petitioner,**

**vs.**

**BAY HARBOR FARM L.C.; DON  
PROCTOR; and UNINSURED  
EMPLOYERS FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 04-1059**

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Alfredo Reyes asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of Mr. Reyes's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Reyes claims workers' compensation benefits from Bay Harbor Farm L.C., Don Proctor, and the Uninsured Employers Fund (hereafter referred to jointly as "Bay Harbor") for a head injury that allegedly occurred on November 28, 2002. After holding an evidentiary hearing, Judge Marlowe found Mr. Reyes's accident did not cause his medical condition and denied his claim for lack of medical causation.

In his motion for review, Mr. Reyes argues that the medical evidence shows the work accident caused his medical condition and therefore he is entitled to benefits; in the alternative, he argues that a medical panel should be appointed to avoid a substantial injustice.

**FINDINGS OF FACT**

The Commission adopts Judge Marlowe's findings of fact with supplementation from the record. The following facts are relevant to the issue on review before the Commission:

Mr. Reyes claims he injured his head on a tractor at work on November 28, 2002, and that he sought medical treatment later that same day. According to the hospital records, however, Mr. Reyes reportedly hit his head about two weeks earlier "on a bar of some kind" and that in the last day or two he had dizziness. There was no external evidence of trauma to his head and a CT scan showed negative for any acute injury. There was no mention that Mr. Reyes hurt his head at work. Mr. Reyes sought treatment again on December 2<sup>nd</sup>, wherein he reported the injury had been two and

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a half weeks earlier. When he was treated for a headache in February, the injury was noted to have occurred in October with headaches on and off since November. There was no mention that Mr. Reyes injured his head in a work accident during any of these visits or in subsequent hospital visits in March and June of 2003.

In February 2004, Dr. Frazier summarized the recent medical records he had reviewed and his own treatment with Mr. Reyes and concluded that "I think that at this point it is not conclusive as to whether his symptoms are from trauma or coincidental as to the evolution as some of these symptoms do not appear to be consistent and it is not totally clear why that is." Again, no mention was made that Mr. Reyes's injury was caused by a work accident.

The first mention in the medical records that Mr. Reyes injured his head at work was noted on March 23, 2004. On August 10, 2004, Mr. Reyes was evaluated for physical therapy due to continuing dizziness and imbalance. During this evaluation, it was noted that "[Mr. Reyes] wasn't aware of any falls or accidents he had that may have caused this. He feels like he may have had a sinus infection that caused it in that he has frequent sinus infections."

**DISCUSSION AND CONCLUSION OF LAW**

The threshold issue in this case is whether Mr. Reyes established by a preponderance of evidence that his medical condition was caused by the November 28, 2002, work accident. Section 34A-2-401 of the Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was both the "medical cause" and "legal cause" of the injury. See Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). Allen further defined the requirements for proof of medical causation in workers' compensation cases as follows:

Under the medical cause test, the claimant must show by evidence, opinion, or otherwise that the stress, strain, or exertion required by his or her occupation led to the resulting injury or disability.

The Commission has reviewed the record and finds no evidence that would indicate Mr. Reyes's condition is medically caused by the November 2002 head injury—whether work-related or not. In fact, Dr. Frazier's opinion expressed doubt that Mr. Reyes's condition was caused by trauma and stated the possibility that, due to the inconsistency of Mr. Reyes's symptoms, the timing of his symptoms with the head trauma was only coincidental. Further, the Commission notes that Mr. Reyes's omission to the medical providers that he was injured in a work accident for well over a year, and his inconsistency in relating the events—even taking into account the language barriers—discredits his claim that his injury was work related. Therefore the Commission finds, based on the record, that Mr. Reyes's claimed work accident of November 2002 did not cause his medical condition.

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In his motion for review, Mr. Reyes contends that he has not been able to have a complete medical workup due to his low income and, therefore, under Commission Rule R602-2-2.C and D, the Commission should appoint a medical panel, particularly because "a substantial injustice may occur without such further evaluation." However, the Commission does not find that the facts of this case warrant appointing an independent medical panel or physician to further examine Mr. Reyes. The Commission affirms Judge Marlowe's finding that Mr. Reyes failed to show medical causation and denial of benefits.

**ORDER**

The Commission affirms Judge Marlowe's decision. It is so ordered.

Dated this 24<sup>th</sup> day of February, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.